

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.01.2021

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRL.O.P.No.598 of 2021

S.Radhakrishnan

... Petitioner

Vs.

The State represented by
The Sub-Inspector of Police,
Tiruvannamalai Taluk Police Station
Tiruvannamalai District
(Crime No.2798 of 2020) Respondent

Prayer: Criminal Original Petition filed under Section 438 of Cr.P.C. to enlarge the petitioner on anticipatory bail in the event of his arrest in Crime No.2798 of 2020 pending investigation on the file of the respondent police.

For Petitioner : Mr.M.Krishnamoorthy

For Respondent : Mr.C.Iyyappa Raj
Additional Public Prosecutor

ORDER

(The case has been heard through video conference)

The petitioner who apprehends arrest at the hands of the respondent police for the alleged offences punishable under **Sections 430, 379 I.P.C** and 21(5) Mines and Minerals Act 1957 and 3(2) of Tamilnadu Public Property Prevention of Damage & Loss Act, 1992, in Crime No.2798 of 2020 on the file of the respondent police, seeks anticipatory bail.

2.The case of the prosecution as per the defacto complainant viz. Bharathi, Sub-Inspector of Police, Tiruvannamalai Taluk Police Station is that while he was on his usual rounds, he had seen two lorries bearing No.TN19 B 4114 & TN31AD8627 being loaded with sand inside Samuthram Lake and when the police parties apprehend them, one person escaped from the scene of occurrence and the other accused informed them that he along with his owner viz. Radhakrishnan, had illegally dug the sand from the water body, and had taken three units of sand in each in two lorries, thereby, the said person was arrested and a case was registered.

3.The learned counsel appearing for the petitioner would submit that the petitioner is innocent and he has been falsely implicated in this case. He would further submit that the petitioner is the owner of agricultural lands in S.No.70/8 in Melchettypattu Village and he had applied for lifting sands for agricultural purpose and by order dated 02.09.2020, the Tahsildhar, Tiruvannamalai Taluk, has granted permission for the petitioner to lift 50 units of sand from the lake in Nallavan Palayam, from the period between 03.09.2020 to 06.09.2020. Based on the permit, the petitioner along with his drivers has taken sand from the lake on 05.09.2020. He would further submit that the petitioner had directed the drivers to take sand only as per the permission granted by the Tahsildhar, Tiruvannamalai Taluk and they have been falsely implicated in this case by the respondent. He would submit that when he had filed the earlier anticipatory bail application, the petitioner was unable to produce the copy of the permit granted to him for mining sand, thereby, this Court, in view of the orders passed in Crl.O.P.No.13334 of 2020 dated 03.09.2020 had dismissed the earlier anticipatory bail application filed by the petitioner in Crl.O.P.No.14896 of 2020 dated 23.09.2020, following the orders passed by this Court in a batch of applications in Crl.O.P.No.13334 of 2020 dated 03.09.2020, expressing the opinion that the offenders despite several orders passed by various Benches of this Court regarding illegal sand mining and knowing fully well about the evil consequences affecting the environment and society at large and the implications thereon are indulging in the offences of illegal quarrying/mining, theft and smuggling of sand and minerals and that finding that the case comes under the category of cases of large magnitude affecting and impacting livelihood of a very large number of people knowingly and unknowingly, had dismissed the earlier applications. Subsequently, the order of this Court in Crl.O.P.No.13334 of 2020 and Batch etc. dated 03.09.2020 was clarified by the Hon'ble Supreme Court and the Hon'ble Supreme Court had not agreed with the broad sweep of the observation made by this Court in Paragraph 27 of the order in Crl.O.P.No.13334 of 2020 and connected matters decided on 03.09.2020 and had directed that the role assigned to the person would have to be considered on case to case basis. He would further submit that without prejudice to his rights, the petitioner is prepared to deposit some considerable amount to any charitable organization or association.

5.The learned Additional Public Prosecutor would oppose stating that the petitioner was granted permission only to lift sand from the Lake, whereas, the drivers along with the petitioner have dug deeper and taken Norambu sand, thereby, degraded the environment, causing damage to the lake bed.

6.Accordingly, this Court takes into consideration, the role assigned to the petitioner in the present case. In this case on hand, it is seen that the petitioner has been issued permit to transport sand. However, at the time of interception, the driver of the vehicle without producing the permit had ran away from the scene of occurrence and thereby, the defacto complainant had seized the vehicle along with sand and handed over it to the respondent.

7. Taking into consideration the above facts and circumstances of the case, this court is inclined to grant anticipatory bail to the petitioner subject to the following conditions;

8. In order to curb the illegal activities and taking into consideration the voluntary submission made by the petitioner offering to donate/pay considerable amount to any charitable organization or association, this Court is of the opinion that the petitioner may be directed to donate/pay a sum of Rs.60,000/- (Rupees Sixty Thousand only), to **"The Dean, Rajiv Gandhi Government General Hospital, Chennai, bearing A/c.No.10273425961, State Bank of India, Park Town (Chennai), 68, Evening Bazaar Road, Chennai, IFSC:SBIN0001856,"** without prejudice to his rights and contentions before the trial Court.

9. Merely, because the petitioner deposits the said amount, it would not amount to admission of his guilt. Therefore, it is open to the trial Court to deal with the case independently.

[a] the petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

[b] the petitioner shall report before the respondent police daily at 10.30 a.m. for a period of two weeks and thereafter, as and when required for interrogation.

10. Accordingly, the petitioner is directed to pay a sum of Rs.60,000/- (Rupees Sixty Thousand only), to **"The Dean, Rajiv Gandhi Government General Hospital, Chennai, bearing A/c.No.10273425961, State Bank of India, Park Town (Chennai), 68, Evening Bazaar Road, Chennai, IFSC:SBIN0001856"**. On such payment and production proof, the petitioner is ordered to be released on bail in the event of arrest or on his appearance, within a period of fifteen days from the date on which the order copy is made ready, before the **learned District Sessions Judge, Tiruvannamalai District**, on condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties, each for a like sum to the satisfaction of the respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned, failing which, the petition for anticipatory bail shall stand dismissed and on further condition that:

[c] the petitioner shall not tamper with evidence or witness either during investigation or trial.

[d] the petitioner shall not abscond either during investigation or trial.

[e] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action

against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Magistrate/ Trial Court himself as laid down by the Hon'ble Supreme Court in **P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]**.

[f] If the accused thereafter abscond/s, a fresh FIR can be registered under Section 229A IPC.

-sd/-
21/01/2021

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE DISTRICT SESSIONS JUDGE,
TIRUVANNAMALAI DISTRICT

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE SUB INSPECTOR OF POLICE,
TIRUVANNAMALAI TALUK POLICE STATION,
TIRUVANNAMALAI DISTRICT.

4 "THE DEAN, RAJIV GANDHI
GOVERNMENT GENERAL HOSPITAL, CHENNAI,
BEARING A/C.NO.10273425961, STATE BANK OF
INDIA, PARK TOWN (CHENNAI), 68, EVENING
BAZAAR ROAD, CHENNAI.

+1 CC to M/S.M.KRISHNAMOORTHY Advocate on payment of necessary charges SR.NO.692

CRL OP.598/2021

Date :21/01/2021

TA-29/01/2021